



**First-tier Tribunal  
Property chamber  
(Residential Property)**

**Case reference** : CAM/00KF/LCP/2014/0005

**Property** : Mill Lodge,  
10 West Road,  
Shoeburyness,  
Essex SS3 9DP

**Applicant** : Tony Cox

**Respondent** : Forcelux Ltd.

**Date of Application** : 4<sup>th</sup> November 2014

**Type of Application** : To determine the costs payable on  
service of RTM notices (Section 88 of  
the Commonhold and Leasehold  
Reform Act 2002 (“the Act”))

**Tribunal** : Bruce Edgington (solicitor, chair)  
David Brown FRICS

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**DECISION**

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1. The reasonable legal costs of the Respondent in dealing with the matters set out in Section 88 of the Act are £2,255.65 plus VAT on profit costs but subject to the consideration of whether VAT is recoverable by the Respondent from the Revenue as a set off against VAT payable. If it is, no VAT is recoverable from the right to manage companies as the legal services are provided to the Respondent.
2. £931.95 plus VAT if applicable is payable by Mill Lodge RTM Company Ltd. and £1,323.70 plus VAT if applicable is payable by Mill Lodge Shoeburyness RTM Company Ltd.

**Reasons**

**Introduction**

3. The Applicant issued this application describing himself as “Director, RTM Company”. When asked for the name of the RTM company he said it was “Mill Lodge Shoeburyness RTM Company Ltd.”. There has been a total of 5 claim notices served on the Respondent but it is clear that the first 2 of these were served by a different company namely Mill Lodge RTM Company Ltd.

4. The invoices submitted by the Respondent's solicitors for the 5 claim notices purport to suggest that Mill Lodge Shoeburyness RTM Company Ltd. is liable to pay all the costs. The Applicant, Mr. Cox, clearly represented both companies.
5. The Act does not suggest that an application to this Tribunal to consider the reasonableness of costs incurred by the recipient of a claim notice has to be made by the relevant RTM company itself. Furthermore, the Applicant is not challenging the hourly rate for the work undertaken by the Respondent's solicitors nor any of the actual time spent – merely the liability for payment based purely on the merits of each claim. The Tribunal therefore considers that it has jurisdiction to deal with the payability of all the costs claimed, and it does so.
6. This application was made on the 4<sup>th</sup> November 2014. A directions order was issued on the 6<sup>th</sup> November 2014. This ordered the Respondent to serve full details of its solicitors' costs and the Applicant was then ordered to serve any objections. The Tribunal said that it was content for the matter to be dealt with on a consideration of the papers to include the parties' submissions and it would do so on or after 8<sup>th</sup> January 2015. The parties were told that if they wanted an oral hearing, they could apply for one and it would be arranged. No such request was received.

### **The Law**

7. Section 88(1) of the Act says that "*a RTM company is liable for reasonable costs incurred by a person who is....a landlord under a lease of the whole or part of any premises....in consequence of a claim notice given by the company in relation to the premises*"
8. Section 88(3) says that where an application to this Tribunal for confirmation that the RTM company is entitled to manage a property is dismissed, the RTM company becomes liable to another party for its costs incurred in those proceedings.
9. The method of assessment is on the basis of what is sometimes called the indemnity principle. In other words the costs payable are those which would be payable by the client "*if the circumstances had been such that he was personally liable for all such costs*" (Section 88(2) of the Act).

### **Conclusions**

10. The Upper Tribunal has said in several recent cases that the Tribunal process is adversarial and Tribunals should therefore be cautious about raising issues which are not taken by parties.
11. As has been said, neither the charging rate, the amount of work undertaken by the Respondent's solicitors nor the disbursements are challenged and they will therefore be allowed as claimed. In fact the Tribunal has looked at the charging rate in particular and in view of the specialist nature of this subject, the rates claimed are deemed to be reasonable and would have been allowed in any event.

12. The first point raised by the Applicant is that the invoices for the first 2 claim notices purport to suggest that the costs are payable by Mill Lodge Shoeburyness RTM Company Ltd. That cannot right, it is said, because those claim notices were not served by that company. That objection must be correct because, whilst the invoices are correctly addressed to the Respondent, it is absolutely clear that those claim notices were served by Mill Lodge RTM Company Ltd. which the Respondent acknowledges is a different company.
13. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> claim notices were served by Mill Lodge Shoeburyness RTM Company Ltd. The costs relating to the 3<sup>rd</sup> notice are agreed. The claims for the 4<sup>th</sup> and 5<sup>th</sup> claim notices are denied for identical reasons namely *"This claim in the view of Mill Lodge Shoeburyness RTM Company Ltd. was an extension of the 3<sup>rd</sup> claim. If the third claim had been rightfully accepted we would have incurred those costs"*. This is somewhat difficult to understand and the Tribunal infers that the word 'only' should have been added at the end i.e. it is being said that only the claim for the 3<sup>rd</sup> notice is payable.
14. In essence, the Applicant is saying that the reasons set out in the counter-notices to the 3<sup>rd</sup> and 4<sup>th</sup> claim notices were invalid and it should not therefore have been necessary for the 4<sup>th</sup> and 5<sup>th</sup> claim notices to be served. The Respondent says that the Applicant received the 3<sup>rd</sup> and 4<sup>th</sup> counter notices and instead of challenging them by means of an application to this Tribunal, the RTM company decided to serve the 4<sup>th</sup> and 5<sup>th</sup> claim notices.
15. Although the point is not made specifically, it may be that the Applicant had in mind section 88(3) of the Act which states, as above, that an application to this Tribunal by Mill Lodge Shoeburyness RTM Company Ltd. challenging a claim notice which failed, would have triggered a right to costs by the Respondent in respect of its representation before the Tribunal. In other words a failed challenge would be likely to have significantly increased such company's liability for costs.
16. The Respondent's case succeeds. It was the decision of the RTM company to serve further claim notices rather than lodge formal challenges. As a result, section 88(1) of the Act was triggered in each case.



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**Bruce Edgington**  
**Regional Judge**  
**15<sup>th</sup> January 2015**